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सं. 20]

नई दिल्ली, जुलाई 23—जुलाई 29, 2017, शनिवार/श्रावण 1 — श्रावण 7, 1939

No. 20]

NEW DELHI, JULY 23—JULY 29, 2017, SATURDAY/SRAVANA 1—SRAVANA 7, 1939

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक् संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किए गए साधारण आदेश और अधिसूचनाएं
Orders and Notifications issued by the Central Authorities (Other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

आदेश

नई दिल्ली, 20 जुलाई, 2017

आ. अ. 41.—यतः, निर्वाचन आयोग का समाधान हो गया है कि बिहार राज्य से लोक सभा के साधारण निर्वाचन, 2014 के दौरान 32-आरा संसदीय निर्वाचन क्षेत्र से चुनाव लड़ने वाले अभ्यर्थी श्री गोपाल सिंह, तरी मुहल्ला, आरा, बिहार, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्धीन बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे हैं;

और, यतः उक्त अभ्यर्थी ने सम्यक् सूचना दिए जाने पर भी उक्त असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है;

उक्त तथ्यों पर विचार करने के पश्चात् निर्वाचन आयोग को यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायौचित्य नहीं है ;

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में श्री गोपाल सिंह को संसद के किसी भी सदन के या किसी राज्य/संघ राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और सदस्य होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरर्हित घोषित करता है:-

[सं. 76/बिहार-लो.स./2014]

आदेश से,

सुमित मुखर्जी, प्रधान सचिव

ELECTION COMMISSION OF INDIA**ORDER**

New Delhi, the 20th July, 2017

O. N. 41.—Whereas, the Election Commission is satisfied that Sh. Gopal Singh, Tari Mahalla Ara, Bhojpur, Bihar, a contesting candidate of 32-Ara Parliamentary Constituency during General Election to Lok Sabha 2014 from state Bihar has failed to lodge any account of his election expenses as required by the Representation of the People Act, 1951, and the rules made there under.

And Whereas, the said candidate has either not furnished any reason or explanation for the said failure even after due notice of the Election Commission.

And Whereas The Election Commission is satisfied that the said candidate has no good reason or justification for the said failure;

Now, therefore in pursuance of Section 10A of the said Act, the Election Commission hereby declares Sh. Gopal Singh to be disqualified *for being chosen as, and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State/Union Territory for a period of three years from the date of this order:-*

[No. 76/BR-HP/2014]

By Order,

SUMIT MUKHERJEE, Principal Secy.

नई दिल्ली, 24 जुलाई, 2017

आ. अ. 42.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 और 116(ग) के अनुसरण में, भारत निर्वाचन आयोग 2014 की निर्वाचन याचिका संख्या 3 में दिनांक 9 जून, 2017 के गुवाहाटी उच्च न्यायालय के निर्णय/आदेश को एतद्वारा प्रकाशित करता है।

(2014 की निर्वाचन याचिका संख्या 3 में गुवाहाटी उच्च न्यायालय का दिनांक 9.6.2017 का संलग्न निर्णय/आदेश अंग्रेजी भाग में छपा है)

[सं. 82/असम-लो.स./03/2014]

आदेश से,

नरेन्द्र ना. बुटोलिया, प्रधान सचिव

New Delhi, the 24th July, 2017

O. N. 42.—In pursuance of Section 116(c) and Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby, publishes the judgement/order of the High Court of Guwahati dated 9th June, 2017 in the Election Petition No. 3 of 2014.

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

PRINCIPAL SEAT AT GUWAHATI

(EXTRAORDINARY WRIT JURISDICTION)

Election Petition No. 3 of 2014

Janak Lal Basumatary & another

... Petitioners

Versus

Naba Kumar Sarania (Hira)

... Respondent

BEFORE**HON'BLE MR. JUSTICE SUMAN SHYAM**

For the petitioners : Mr. B. Narzari, Senior Advocate
Mr. B. C. Basumatary, Advocate
Mr. R. S. Chouhan, Advocate

For the respondents : Mr. N. Dutta, Sr. Advocate
Mr. D. Mazumdar, Sr. Advocate
Mr. M. Sarania, Advocate

Dates of hearing : 27-04-2017

Date of Judgment : 09-06-2017

JUDGMENT AND ORDER (CAV)

Heard Mr.B.Narzari, Learned Senior Counsel and Mr. B.C. Basumatary, learned counsel assisted by Mr. R. S. Chouhan, learned counsel appearing for the election petitioners. Also heard Mr. N. Dutta, learned senior counsel as well as Mr. D. Mazumdar, learned senior counsel, assisted by M. Sarania, learned counsel appearing on behalf of the respondent.

2. By filing this petition, the two election petitioners, who claim to be the electors of the No. 5 Kokrajhar (ST) Parliamentary Constituency, have prayed for setting aside the election of the respondent/returned candidate viz. Sri Naba Kumar Sarania on the ground that the said constituency is a reserved constituency which can be filled up only by a candidate belonging to the Scheduled Tribe (ST) community of Bodoland Territorial Areas District (BTAD), Assam and the respondent does not belong to any of the Scheduled Tribe (ST) communities under the Constitution (Scheduled Tribes) Order, 1950. Urging as above, the election petitioners have sought annulment of the election of the sole respondent on the ground of improper acceptance of his nomination paper by the Returning Officer.

3. The undisputed facts of the case, as emerging from the record, is that on 29.03.2014 the Returning Officer had notified the schedule for holding election to the No.5 Kokrajhar (ST) Parliamentary Constituency (herein after referred to as 'the said Constituency'). As per the notice dated 29.03.2014, the last date of submission of nomination papers was 05.04.2014; the date of scrutiny of the nomination papers was fixed on 07.04.2014; the last date for withdrawal of nomination papers was 09.04.2014, and date of polling was 24.04.2014.

4. Besides the respondent, there were five other candidates who had filed nomination papers seeking election from the said constituency. The respondent had submitted his nomination claiming himself to be a Boro Kachari. Along with his nomination paper, the respondent had submitted a caste certificate dated 12.10.2011 issued by All Assam Tribal Sangha, Tamulpur District Unit notifying his ST status. The respondent had contested the polls as an Independent Candidate.

5. As per the schedule notified by the Returning Officer, the polling was held on 24.04.2014 wherein, recording of votes were done by means of Electronic Voting Machines (EVM). Counting of votes was held on 16.04.2014 and the results were declared on the same day whereby the respondent was shown to have been elected by polling 6,34,428 valid votes by defeating his nearest rival by a margin of 3,55,779 votes. The votes polled by all the six candidates are given herein below in tabular form :—

Sl. No.	Named of Candidates	Votes polled
1	Naba Kumar Sarania (Hira)	634428
2	Urkhaw Gwra Brahma	278649
3	Chandan Brahma	243759
4	Sabda Ram Rabha	20074
5	Ranjit Shekhar Mooshahary	17537
6	Sansuma Khunggur Bwiswmuthiary	11239

6. The pleaded case of the election petitioners is that as per the Presidential Order of 1950 "Boro Kachari" is one of the notified ST Communities but "Sarania kachari" is not included therein. According to the petitioners, "Sarania kachari" is a distinct and separate community which is not a part of "Bodo Kachari" community. The 'Saranias' belong to "Sarania Kachari" community which was never a part of any Scheduled Tribe community recognized in the State of Assam and therefore, the said community is not a tribe or sub-tribe under any recognized schedule tribe communities included in the list available under Part-II of the Schedule to the Constitution (Scheduled Tribes) Order, 1950, as amended up-to-date. The petitioners have further stated that the Government of Assam vide Notification No.TAD/BC/491/07/117 dated 04.05.2010 had constituted a "Development Council for the Sarania Kacharis" with the object of providing maximum participation of the said community within the framework of the Constitution of India for their socio-economic-educational-cultural and ethnic advancements, recognizing the said community as a distinct and different group from the Boro Kacharies. The fact that the respondent belongs to the "Sarania Kachari" community is admitted by the use of the surname "Sarania" and as such, the respondent was not eligible to contest the election from the said constituency, which is reserved only for the ST category candidates. According to the election petitioners, the nomination paper filed by the respondent had been improperly accepted by the Returning Officer as a result of which the outcome of the poll had been materially affected. As such, the election of the returned candidate/respondent is liable to be set aside.

7. The respondent had contested the election petition by filing written statement inter-alia questioning the maintainability of the election petition under sections 81 and 83(1) of the Representation of Peoples Act, 1951. The respondent has alleged that the election petition has been filed with a malafide intent and with the oblique motive of causing harassment and injury to the respondent at the instance of his political rivals who have a vested interest in the matter. While generally denying the averments made in the election petition, the respondent has stated that he is a member of the “Boro Kachari” community and ‘Sarania’ is only his surname. The respondent has denied the averment made by the election petitioners to the effect that ‘Sarania’ community is a distinct and separate community having a separate identity not forming a part of the Scheduled Tribe communities living in the BTAD area. According to the respondent, Boro Kachari is a community included in the list appended to the Constitution (Scheduled Caste and Scheduled Tribes) Order, 1950. Since the respondent belongs to the “Boro Kachari” community, The All Assam Tribal Sangha had issued an ST certificate to him which was produced before the Returning Officer at the time of submitting his nomination paper and as such, there was no infirmity in the acceptance of his nomination paper by the Returning Officer.

8. On the basis of the pleadings, this Court had framed as many as 7 (seven) issues for trial which are as follows:—

- “1. Whether the petitioners have got any cause of action?
2. Whether the respondent belongs to ‘Sarania’ Community?
3. Whether ‘Sarania’ is a district (sic) separate community and not a Boro, Borokachari Scheduled Tribes as notified?
4. Whether proposal for inclusion of ‘Sarania’ community in the orders specifying Scheduled Tribes lists is pending and is still under consideration by the appropriate authority?
5. Whether nomination of the respondent was improperly accepted for election to the House of People from the 5 Kokrajhar (ST) Parliamentary Constituency in Assam State?
6. Whether the result of the election, in so far as it concerns the returned candidate i.e. the respondent, has been materially affected by improper acceptance of his nomination?
7. Whether the election of the respondent, i.e. Shri Naba Kumar Sarania (Hira), from the 5 Kokrajhar (ST) Parliamentary Constituency in Assam State is liable to be declared void?”

9. During trial, the election petitioners had examined 5 (five) witnesses and produced 21 (twenty one) documents. The respondent had also examined 5 (five) witnesses and produced 11 (eleven) documents.

Discussions and Decisions on the issues :-

Issue No. 1 – Whether the petitioners have got any cause of action ?

10. From the pleadings contained in the election petition, it is apparent that the challenge to the election of the respondent has been made on the sole ground that he does not belong to the “Boro-Kachari” community but is a member of the “Sarania Kachari” community, which is not recognized as Scheduled Tribe (ST) under the Presidential Order of 1950. Since the No.5 Kokrajhar (ST) Parliamentary Constituency is reserved for ST candidates, hence, a declaration has been sought under section 100(1)(b) of the Representation of Peoples Act, 1951 to the effect that the acceptance of the nomination paper submitted by the respondent was improper and, therefore, his election was void.

11. The petitioner No. 1 has produced copy of the Electoral Roll of No. 29 Kokrajhar (W) ST Legislative Assembly constituency and his Electoral Photo Identity Card (EPIC) as Exhibits 1 and 2. Likewise, Electoral Roll of No. 29 Kokrajhar Legislative Assembly Constituency, under part-29 of village Malandubi and the Electoral Photo Identity Card of the petitioner No. 2 has been brought on record and marked as exhibits 3 and 4. From the above documents, it is prima facie established that both the petitioners are electors of the said constituency. In view of the above, I am of the opinion that there is cause of action for filing the election petition. Although the maintainability of the election petition had been challenged by raising grounds under Section 81, 83(1) and 117 of the Representation of Peoples Act, 1951, yet, the said grounds were not pressed by the respondent at the appropriate stage of the proceeding. Therefore, I am not inclined to non-suit the petitioners on the maintainability issue. As such, this issue is answered in the affirmative and in favour of the petitioners.

Issue No. 2 : Whether the respondent belongs to “Sarania” community ?

Issue No. 3 : Whether Sarania is a distinct and separate community and not a Boro, Boro-Kachari Scheduled Tribe as notified.

12. Both these issues are interconnected and as such, I propose to deal with both the issues together.

13. The PW-1 Janaklal Basumatary, who is the election petitioner No.1, has deposed in his examination-in-chief that one Daorao Dekhreb Narzary of Kokrajhar had filed an application under the Right to Information Act for furnishing copies of nomination papers and election result sheets of the respondent. Accordingly, the Election Officer, Kokrajhar furnished the same to the applicant on 02/06/2014 and he got the said copies from Daorao Dekhreb Narzary, which are annexed as Ext. 5 (series). But Daorao Dekhreb Narzary has not been called as a witness to prove those documents. Therefore, none of the Ext -5 (series) documents can be regarded as evidence.

14. According to the PW-1, the grandfather and father of the respondent Naba Kumar Sarania are not Boro-Kachari and Scheduled Tribe (Plain) but they belonged to "Soru-Koch" community of Assam, who are notified as OBC. The deponent has deposed that it may so happened that the father of the respondent, namely, Lakhi Kanta Sorukoch was a follower of Shri Shri Sankardeva and became "Sarania". The PW-1 has further deposed that "Sarania" is a distinct and separate community of Assam. The respondent may belonged to "Sarania" community but does not hail from Boro-Kachari community and that "Sarania" is not notified ST(P).

15. The PW-1 has also deposed that the legacy certificate and the land documents produced in the form of Ext. 6, 7 and 8 which are the copies of Jamabandi for Surveyed Village of Dag No. 574 and Patta No. 29(O)/154(N) of Village Digalipar, would go to show that the father of the respondent used to write the surname "Soru-koch". But there are no pleading in the election petition supporting those documents.

16. In his examination-in-chief, the deponent had also stated that the "All Assam Tribal Sangha" is not the authority to issue caste certificate without verification of caste and, therefore, the certificate issued by the All Assam Tribal Sangha, Tamulpur district Unit in favour of the respondent was void.

17. During his cross examination, the PW-1 had admitted that he had written on topics like "Foreigner Issues" and other social issues and that he had to face criticism for taking a stand on the issue of "Saranias". PW-1 had also admitted that he was one of the petitioners in the writ petition filed before this court challenging the caste certificate issued to the respondent by the All Assam Tribal Sangha where-in a prayer for restraining issuance of caste certificates to communities other than those enlisted in the revised notification dated 01/04/2003 had been made but in the said writ petition, there is no reference to the communities other than "Sarania" community. In his cross examination, the PW-1 had also stated that "Saranias" came from several communities and some "Saranias" have come from "Boro-Kachari" or "Rabha".

18. The election petitioner No. 2 Shri Ashok Brahma did not appear before the Court as a witness nor did he sign or verify the pleadings brought on record on behalf of the election petitioners.

19. PW-2 Sri Baneshwar Narzary is an official of Tamulpur Block who had appeared on receipt summons issued by this court. PW-2 has produced the copy of the Jamabandi of the plot covered by Dag No. 574, patta No. 154 of Village Digalipar under Pub Baksa Mouza which was marked as Exhibit-19.

20. PW-3 Shri Ganesh Swargiary, who is also an elector of No.5 Kokrajhar (ST) Parliamentary Constituency had supported the version given by the PW-1 and has stated that the respondents does not belong to Boro-Kachari community but his parents belongs to "Koch" community. PW-3 had also stated that the caste certificate issued by the President of All Assam Tribal Sangha, Tamulpur District, certifying that the respondent was a Boro-Kachari was invalid and had been issued in violation of the Constitution (Scheduled Tribe) Order, 1950.

21. Similarly, PW-4 Mahesh Chandra Brahma had deposed that he was the Vice-President of Kokrajhar District Tribal Sangha during the year 2003. The witness has deposed that he was aware of the letter dated 29/09/2003 issued by the All Assam Tribal Sangha and as per resolution No 2, Sarania Kachari community was not notified as Schedule Tribe. In his cross examination the PW-4 has admitted that he has not produced any evidence to show that he was the Vice-President of the Kokrajhar District Tribal Sangha during 2003.

22. PW-5 Sumon Roy is the employee of the Internet Café situated at Kokrajhar who had given the printout of the gazette notifications relied upon by the petitioners by downloading the same from the internet.

23. The DW-1 i.e. the respondent, in his examination-in-Chief, had emphatically stated that he belongs to the "Boro-Kachari community" and, therefore, he was a Schedule Tribe (P) coming within the purview of the Presidential Order of 1950. DW-1 had deposed that by the notification dated 22/06/2009, the authority and responsibility for identifying the Scheduled Tribe communities and to issue certificate to the ST (Plains) and ST(Hills) of Assam was entrusted by the State Government upon the All Assam Tribal Sangha and the said body has issued the caste certificate dated 12/10/2011 (Ext-5 series) in his favour which is still holding the field. The witness has also deposed that the notification dated 04/05/2010 was published by the Principal Secretary to the Government of Assam, WPT & BC Department, constituting a Development Council for the development of "Sarania-Kachari" on a completely different context.

24. During cross examination, the DW-1 has stated that he had represented himself as a "Boro-Kachari" in his nomination paper filed before the Returning Officer. The witness has denied that his father's name was Lakhi Kanta Sorukoch or that the name of his mother was "Dipika Sorukoch". According to the DW-1, "Sarania" is the surname just like any other surname as Das, Deka, Brahma, Choudhury, Sarkar etc. DW-1 had further stated that since there is

no community called “Sarana”, hence, he did not have the knowledge as to which God was worshiped by the community. He had further admitted that some people having the surname “Sarana” chant and sing “Nam-Kirtan”. The DW-1 had also stated that persons belonging to Boro-Kachari community believe in many God and Goddess. The witness has further deposed that there are Boro-Kacharis who did not know the Boro language and some Boro-Kacharis are even having surnames like Choudhury, Deka, Das, Sarania and do not speak Bodo (Boro) language.

25. The documents introduced by the election petitioners had been taken on record under objection from the respondent. The respondent has also raised strong objection as regards Exhibits 6,7 and 8 on the additional ground that there are no pleadings in the election petition permitting the petitioners to adduce any such evidence.

26. Referring to the pleadings contained in paragraph 8 and 9 of the election petition, wherein it has been averred that “Sarana” is a distinct and separate community and their members are not Boro-Kachari Scheduled Tribe and that by notification dated 04/05/2010, the Government of Assam had constituted a “Development Council for Sarania-Kacharis” for providing maximum participation of the said community within the constitutional frame work, Mr. Basumatary submits that the aforementioned statements have not been specifically denied in the written statement. As such, the said statements would have to be treated as admitted by the respondent as per Order VIII Rule 5 of the CPC. Therefore, submits Mr. Basumatary, the election petition is liable to be allowed only on the admission made by the respondent. In support of his aforesaid argument, Mr. Basumatary has relied upon the following decisions of the Supreme Court:—

- i. *Civil Appeal No. 7502/2004 (Union of India Vs. M/s. Agarwal Iron Industries).*
- ii. *(1993) 5 SCC 223 (Lohia Properties Pvt. Ltd. Vs. Atma Ram Kumar).*
- iii. *Uttam Singh Duggal and another Vs. United Bank of India and others.*

27. Referring to the evidence on record, the learned counsel for the petitioners has further contended that “Saranias” are those who have taken shelter under Mahapurush Sankardeva and they follow the tenets like Guru, Deva, Nama and Bhakat, which are not practiced by the Boro Tribes. According to Mr. Basumatary, followers of Mahapurush Sankardev chant “Kirtan” in the “Naam Ghars” and there is a Naamghar in the Dighalipar village where the respondent belongs to. Mr. Basumatary has also placed heavy reliance on the resolution adopted by the All Assam Tribal Sangha, which was circulated by the letter dated 29/09/2003 (Ext-12) as well as the documents brought on record in the form of Ext-14 series, to contend that the process of identifying the “Sarana-Kachari” as a ST community is still under progress and, therefore, it is self evident that the respondent does not belong to a sub-tribe or sub-caste of the Boro-Kachari community. According to Mr. Basumatary since “Sarana-Kachari” is yet to be recognized as a Scheduled Tribe (ST) community, hence, neither could the All Assam Tribal Sangha, Tamulpur District have issued the certificate in favour of the respondent nor could the Returning Officer accept his nomination paper for the No. 5 Kakrajhar (ST) Parliamentary constituency. The learned counsel further submits that whether the petitioner belongs to one of the communities mentioned in the Presidential Order of 1950 has to be determined on the basis of the list furnished in the Presidential Order itself without making any further enquiry as to whether the “saranias” constitute sub-caste of the Tribes included in the said notification. In support of his aforesaid argument, the learned counsel for the petitioners has relied upon the following decisions :—

- i. *AIR 1965 SC 1557 (Bhaiyalal Vs. Hari Kishan Singh and others).*
- ii. *AIR 1990 SC 991 (Srish Kr. Chodhury Vs. State of Tripura and others).*
- iii. *AIR 2001 SC 393 (State of Maharashtra Vs. Milind and others).*

28. Mr. D. Mazumdar, learned senior counsel for the respondent, on the other hand, has contended that the arguments advanced by the election petitioner are not only devoid of substance but the petitioners have also failed to lead any evidence in support of the pleadings. Pointing at the documents brought on record by the petitioners, the learned senior counsel submits that those are only the photocopies and hence, not admissible as evidence. He further submits that none of the documents have been proved as per the requirement of section 61 of the Indian Evidence Act, 1872. According to Mr Mazumdar, save and except the ST certificate dated 12.10.2011, none of the other documents are admitted by the respondent and hence, cannot be relied upon in this case.

29. By referring to the copy of the writ petition bearing number WP(C) No. 2580/2014, which, along with its enclosures, has been adduced by the respondent as Exhibit-A(series) Mr. Mazumdar submits that the ST certificate issued in favour of the respondent though, challenged by the petitioner no. 1 before this Court, no effort has been made by the election petitioners to pursue the same and the writ petition is still pending disposal . As such, the ST certificate (Ext-A) is still holding the field and taking note of the ST certificate and also the fact that the respondent belongs to the “Boro-Kachari” community, his nomination paper had been accepted by the Returning Officer. Under the circumstances, submits Mr. Mazumdar, there is no justifiable ground for this Court to declare the election of the respondent as void.

30. By referring to the decision of the Supreme Court in the case of *Kumari Madhuri Patil and another Vs. Additional Commissioner, Tribal Development and others* reported in (1994) 6 SCC 241, Mr. Mazumdar submits that if the election petitioners had any doubt about the validity of the Caste Certificate issued in favour of the respondent, they ought to have raised the issue before the State Level Scrutiny Committee constituted for the purpose under the directions of the Hon'ble Supreme Court but in the present case, admittedly, no such step had been taken by the election petitioners and there is also no explanation as to why they had failed to raise the issue at the relevant point of time before the competent forum. According to Mr. Mazumdar, in the case of *Anjali Medhi Vs. State of Assam and others* reported in (2012) 2 GLR 324, when an issue was raised regarding the validity of the social status of a reserved category person, this Court had directed the State Level Scrutiny Committee to look into the matter by holding that it is the Scrutiny Committee that would be the competent authority to verify the social status of reserved category persons. Mr. Mazumdar submits that the issue sought to be raised by the petitioners squarely falls within the domain of the State level Scrutiny Committee and the said issue cannot be agitated in an election petition.

31. Mr. Mazumdar further contends that the respondent has categorically denied the assertions that Sarania-Kachari is a distinct community or that the respondent is not a Boro-Kachari. In view of the above, the burden to prove the assertions made in the election petition would lie upon the petitioners as per Section 101 of the Evidence Act. But in the present case, submits the learned senior counsel, petitioners have failed to discharge the burden of proof cast under Section 101.

32. The learned counsels of both the parties have relied upon a few celebrated literary works on the subject to drive home their respective arguments on the contentious issue. Mr. Basumatry has relied upon the book entitled "The Kacharis" written by Rev. Sidney Endel, "Asomiya Manuhor Itihas" by Nagen Saikia, "Tribes of Assam" by B. N. Bordoloi as well "Sarania Kachari Samaj Aru Sanskriti" by Sri Nalini Deka to impress upon this court that the religious philosophy of the Boro kachari tribe centres around the super power of "Bathou Barai" which is analogous to Shiva of Hindu Trinity and that the persons of Boro kachari origin always use surnames that end with the suffix "ArY" such as Basumatary, Doimary, Khaklary, Mushahary etc.

33. By referring to the books "The Kachari" by Sidney Endel and "A history of Assam" by Sir Edward Gait, Mr. Mazumdar, on the other hand, has submitted that these books give a brief account of the history of Assam and are the most authentic and widely accepted monographs on the subject. According to Mr Mazumdar, "Kacharis" are the aborigines or earliest known inhabitants of the Bramhaputra Valley in Assam and they have features of Mongolian types. Mr Mazumdar submits that people belonging to Boro, Boro Kachari, Rabha, Sonowal, Thengal, Deuri, lalung etc are actually the sub-tribes of Kachari. The learned senior counsel submits that in course of time, a section of these tribes have started adopting other surnames such as Deka, Das, Choudhury, Saikia, Barua, Thakuria, Mazumdar, Sarkar etc.

34. Mr. Mazumdar adds that some sections of the sub-caste of Kacharis including the Boro Kacharis took shelter or "sharan" under Mahapurash Shankardev and adopted the surname "sarania" without however, losing their tribal identity. In support of his aforesaid argument, Mr. Mazumdar has relied upon the yearly book published by the Assam State Legislative Assemble to contend that persons with non-tribal surnames such as "Das" and "Deka" have been elected from these reserved constituencies on a number of occasions in the past.

35. From a careful scrutiny of the materials on record, it is crystal clear that the basic contention of the election petitioners are three fold viz. that Sarania-Kachari is a distinct and different community separate from Boro-Kachari, that the respondent belongs to Sarana-Kachari community and that Sarania-Kachari is not a community included in Constitution of India (Schedule Tribe) Order, 1950 as amended by the SC and ST Orders (Amendment) Act, 2002.

36. It is not in dispute that the No.5 Kokrajhar (ST) Parliamentary Constituency is a seat reserved for the Schedule Tribe (Plain) candidate. It is also not in dispute that Borokachari is included in the list of communities appended to the Presidential order of 1950.

37. Section 4 of the Representation of Peoples Act, 1951 prescribes the qualification for membership of the House of People. As per section 4(c) of the Act, 1951, in case of a seat reserved for the Schedule Tribes in the autonomous districts of Assam, a person shall not be qualified to be chosen to fill the seat unless he is a member of any of those Scheduled Tribes and is an elector of the Parliamentary Constituency in which such seat is reserved for. Section 4 of the Act, of 1951 is quoted here-in below for ready reference:—

"4. Qualifications for membership of the House of the People – A person shall not be qualified to be chosen to fill a seat in the House of the People , unless –

- a) *In the case of a seat reserved for the Scheduled Castes in any State, he is a member of any of the Scheduled Castes, whether of that State or of any other State, and is an elector for any Parliamentary constituency;*
- b) *In the case of a seat reserved for the Scheduled Tribes in any State (other than those in the autonomous districts of Assam), he is a member of any of the Scheduled Tribes, whether of the State of or any other State (excluding the tribal areas of Assam), and is an elector for any Parliamentary constituency;*

- c) *In the case of a seat reserved for the Scheduled Tribes in the autonomous districts of Assam, he is a member of any of those Scheduled Tribes and is an elector for the Parliamentary constituency in which such seat is reserved or for any other Parliamentary constituency comprising any such autonomous district;*
- cc) *In the case of the seat reserved for the Scheduled Tribes in the Union territory of (Lakshadweep), he is a member of any of those Scheduled Tribes and is an elector for the Parliamentary constituency of this Union territory;*
- ccc) *In the case of the seat allotted to the State of Sikkim, he is an elector for the Parliamentary constituency for Sikkim;*
- d) *In the case of any other seat, he is an elector for any Parliamentary constituency.”*

38. By issuing the notification dated 1/4/2003, the Deputy Secretary to the Government of Assam, WPT & BC Department has notified the list of SCs and Sts of Assam as per the Schedule Caste and Schedule Tribes Order (Amendment) Act, 2002. As per the said notification, following are the names of STs of Assam :—

1. *Barmans*
2. *Boro, Boro Kacharis*
3. *Deori*
4. *Hojai*
5. *Kachari, Sonowal*
6. *Lalung*
7. *Mech*
8. *(Miri) Miching*
9. *Rabha*
10. *Dimasa*
11. *Hajong*
12. *Singpho*
13. *Khampti*
14. *Garo*

39. Having regard to the ground taken in the election petition, it is thus apparent that in order to succeed in the election petition, the petitioners must first succeed in establishing that the respondent does not belong to any of the aforesaid communities included in the Presidential Order of 1950 (as amended).

40. It would be significant to note here-in that the PW-1 Janaklal Basumatary has testified before this court that some Saranias are Boro kacharis. The statement made by the PW-1 in his cross –examination is extracted here-in below for ready reference :—

“Sarana is a distinct and separate community and they are not Boro-Kachari. As far as I know, Saranias’ are the followers of Baishnab Nam Dharma, which has been introduced by Sri Sri Sankardeva. Ext. A(1) is a representation signed by me along with three others and addressed to SDO(Civil) Tamulpur dated 19th April, 2014. The subject matter of Ext. A(1) is “countersigning the Scheduled Tribe certificate of Naba Kumar Sarania, mistake, recall and cancellation matter regarding.” By the contents of the 4th paragraph of Ext. A(1), what I meant is that Saranias’ come from several communities and some Saranias have come from Boro Kachari or Rabha. According to Ext. A(1) I meant that some Saranias may be the descendants of Boro Kachari and Rabha but by writing Sarania as their surname they cannot be identified because Sarania Kachari is not a part of Boro Kachari.”

41. The aforesaid statement of the PW-1 has been further affirmed in the written arguments filed on behalf of the petitioners. It is, therefore, clear that even to the knowledge and understanding of the election petitioners, some “Saranias” have their roots to the Boro-Kachari or Rabha communities. Significantly, both these communities are included in the list of communities under the Presidential Order of 1950. Having admitted as above, the burden was upon the election petitioners to lead evidence to show that the respondent does not belong to those “Saranias” whose roots are traceable to the Boro-Kachari or Rabha. From the materials on record, I find that the election petitioners have failed to establish the said fact by leading proper evidence.

42. There is no evidence on record to show that “Sarania-Kachari” is a different community. Rather the materials on record, goes to indicate that Sarania is a surname adopted by persons coming from different streams including the kacharis, who had become followers of the great Vaishnava Saint from Assam Srimanta Sankaradeva. It is a matter of common knowledge that Mahapurusha Srimanta Sankaradeva (1449-1568) had worked in diverse fields like religion, literature, music, dance, drama, architecture, and social reconstruction and had a large numbers of followers in Assam as well as other parts of the country drawn from different communities. The above position also finds support from the evidence adduced by the PW-1.

43. From the materials available on record, it appears that the “Saranias” do not believe in idol worship but resort to chanting “Kirtans (Nama)” in a designated place called “Namghar” (a place for congregational worship). Materials on record further indicate that large number of tribal people belonging to the Boro-Kachari were traditionally believers of “Bathou religion” whereby the practice is to worship “Bathou” (Cactus), which was not the practise followed by the saranias.

44. The issue before this court is whether respondent is a ST within the meaning of the Presidential Order of 1950. The above issue will have to be decided by looking at the Presidential Order of 1950 as it stands. While doing so, it will be impermissible to form an opinion merely on the basis of the surname used by the respondent nor can the court go into the question of religious practises followed by him. That is because religious affinity of the respondent cannot be said to have a bearing on the question of his ethnicity or tribal status.

45. The petitioners have placed heavy reliance on the notification dated 4-5-2010 and the letter dated 29/09/2009 to contend that “Sarania kachari” is a separate community and that the respondent is not entitled to be recognized as a tribal. But the above contention of the petitioners is found to be untenable for the following reasons. Firstly, the establishment of a Development Council for the benefit of Sarania Kacharis, by itself cannot lead to the conclusion that Sarania Kachari is a separate community bereft of their original tribal identity. Secondly, a declaration to the effect that “Sarania kacharia” is a separate community can only be made on the basis of cogent evidence in an appropriate proceeding which exercise would be impermissible in an election petition.

46. Coming to the resolution adopted by the All Assam Tribal Sangha, as circulated by the letter dated 29/09/2009, from a perusal of the resolution, I find that the purport of the proposals contained in the letter dated 29/09/2009 are completely different from what is being sought to be projected by the petitioners. For the purpose of ready reference, the proposals circulated by letter dated 29/09/2009 (Ext-12) are extracted herein below :—

“Proposal No. 1

To remove the difficulties to identify the communities of plains tribal of Assam of, Boro, Rabha, Mising, Sonowal Kachari, Tiwa, Deuri, Mech, Hazong etc. It is resolved to make it compulsory to use their respective tribal surname instead of using non-tribal origin surnames. Those who had obtained caste certificate by using non-tribal origin surnames may be asked to obtain fresh certificate by using the tribal origin surname.

Proposal No. 2

The Sarania Kachari community as on today is not notified as scheduled Tribe. Hence if Sarania Kacharies has to get Scheduled Tribe certificate, they have to use Boro or Rabha origin surname, as the Sangha's Chilapathar conference proposal is retained. It is resolved that the Modahi community also is not notified as scheduled Tribe, they also have to use Rabha origin surname to get scheduled Tribe certificate.

Proposal No. 3

Rangiya district tribal Sangha has been issuing certificates to the non-tribal original surnames which should be stopped immediately.

The above decision may be executed w.e.f. 28.9.2003. Thanks.”

From a careful reading of above the proposals, I am of the considered opinion that the idea behind adoption of the resolutions was to restrict the tribals from using non-Boro (or non-tribal) surnames if they wanted to obtain ST certificates. Therefore, these resolutions cannot even remotely signify that persons writing the surname of “Sarania” are not Boro kacharis.

47. In the case of *Bhaiyalal (Supra)*, the Hon'ble Supreme Court had the occasion to deal with a question of similar nature wherein a challenge was made to the validity of the election of the appellant in a reserved seat at Bariache in the district of Sehore in Madhya Pradesh whereby his election was challenged on the ground that the appellant belonged to Dohar caste and was not a Chamar, which was a notified scheduled caste. While answering the issues raised therein, the Hon'ble Supreme Court had made the following observation.

“8. Incidentally, we may point out that the plea that the Dohar caste is a sub-caste of the Chamar caste cannot be entertained, in the present proceedings in view of the Constitution (Scheduled Castes) Order, 1950. This Order has been issued by the President under Art. 341 of the Constitution. Article 341(1) provides that the President may with respect to any State or Union territory, and where it is a State, after consultation with

the Governor thereof, by public notification, specify the castes, races or tribes or part of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be. Sub-Article (2) lays down that Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause, shall not be varied by any subsequent notification. It is thus clear, that in order to determine whether or not a particular caste is a scheduled caste within the meaning of Art. 341, one has to look at the public notification issued by the President in that behalf. In the present case, the notification refers to Chamar, Jatav or Mochi, and so in dealing with the question in dispute between the parties, the enquiry which the Election Tribunal can hold is whether or not the appellant is a Chamar, Jatav or Mochi. The plea that though the appellant is not a Chamar as such, he can claim the same status by reason of the fact that he belongs to the Dohar caste which is a sub-caste of the Chamar caste, cannot be accepted. It appears to us that an enquiry of this kind would not be permissible having regard to the provisions contained in Art. 341. In the case of B. Basavalingappa V. D. Munichinnappa, Civil Appeal No. 401 of 1964, dated 23-9-1964; (reported in AIR 1965 SC 1269), this Court had occasion to consider a similar question. The question which arose for decision in that case was whether respondent no. 1, though Voddar by caste, belonged to the scheduled caste of Bhovi mentioned in the Order and while holding that an enquiry into the said question was permissible, the Court has elaborately referred to the special and unusual circumstances which justified the High Court in holding the Voddar caste was the same as the Bhovi caste within the meaning of the Order; otherwise the normal rule would be; "it may be accepted that it is not open to make any modification in the Order by producing evidence to show, for example, that though caste A alone is mentioned in the Order, caste B is also a part of caste A and, therefore, must be deemed to be included in caste A."

That is another reason why the plea made by the appellant that the Dohar caste is a sub-caste of the Chamar caste and as such must be deemed to be included in the Order, cannot be accepted."

48. In the case of *Prish Kr. Choudhury (Supra)*, the Supreme Court after discussing the law in various judicial pronouncements had observed that the entries in the Presidential Order have to be taken as final and the scope of interfering and admissibility of evidence is confined within the limitation indicated. It would not be open to the Court to make any addition or subtraction of the Presidential Order.

49. Similar view has been taken by the Supreme Court in the case of *State of Maharashtra vs. Milind and others (Supra)*, wherein the following observations have been made by the Supreme Court in paragraph 35 of the judgement :-

"35) In the light of what is stated above, the following positions emerge :-

1. *It is not at all permissible to hold any enquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned Entry in the Constitution (Scheduled Tribes) Order, 1950.*
2. *The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.*
3. *A notification issued under Clause (1) of Art. 342, specifying Scheduled Tribes, can be amended only by law to be made by the Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under Clause (1) of Art. 342 only by the Parliament by law and by no other authority.*
4. *It is not open to State Governments or Courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under Clause (1) of Art. 342.*
5. *Decisions of the Division Benches of this Court in Bhaiya Ram Munda V/s. Anirudh Patra, (1971) 1 SCR 804 and Dina V/s. Narayan Singh, (1968) 38 ELR 212, did not lay down law correctly in stating that the enquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in position (1) above no enquiry at all is permissible and no evidence can be let in, in the matter. "*

50. From the aforementioned judicial pronouncements, it is crystal clear that an enquiry as to whether "sarania kachari" is a separate caste/ community or as to whether the respondent belongs to "Sarania kachari" Community or not would be impermissible in an election petition. It will also not be permissible for the court to go into the question as to which community the respondent belongs to. Since the respondent claims to be a member of the "Boro Kachari" community which is a listed community under the Presidential Order of 1950 and he is holding a valid caste certificate to that effect, there would be no scope for this court to hold that the respondent belongs to some other community. The issue Nos 2 and 3 are, therefore, decided in the negative and against the petitioners.

Issue No. 4 - Whether proposal for inclusion of 'Sarana' community in the orders specifying Scheduled Tribes lists is pending and is still under consideration by the appropriate authority?

51. In view of the discussions made in the forgoing paragraphs in connection with the issue nos. 2 and 3, this issue is also decided against the election petitioners and in favour of the respondent.

Issue No. 5- Whether nomination of the respondent was improperly accepted for election to the House of People from the 5 Kokrajhar (ST) Parliamentary Constituency in Assam State?

Issue No. 6 - Whether the result of the election, in so far as it concerns the returned candidate i.e. the respondent, has been materially affected by improper acceptance of his nomination?

52. As mentioned above, the key question that the Court would be called upon to decide in the present proceeding is as to whether the Returning Officer had improperly accepted the nomination papers submitted by the respondent. What would be significant to note herein that the electoral records containing the nomination papers submitted by the respondent has not been called for by the Court since no such application was ever made by the election petitioners. The arguments advanced by the petitioners counsel is entirely based on photocopies of documents allegedly obtained under the RTI, Act which have not been proved as per the requirement of law. It is, however, not in dispute that the ST certificate (Ext-5) issued in favour of the respondent was produced by him before the Returning Officer and the said certificate is valid till today.

53. While accepting the nomination paper, the Returning Officer is required to be guided by the provisions contained in the Conduct of Election Rules and the Election Manual. The respondent had submitted his nomination paper by declaring him as ST candidate belonging to the Boro-Kachari community. The said claim of the respondent was supported by a caste certificate issued by the competent authority. There is nothing on record to indicate that any of the other candidates contesting the election from the constituency had ever raised any objection as to the candidature of the respondent. Under the circumstances, there was no valid reason for the Returning Officer to reject the nomination paper of the respondent on the above stated ground. In view of the above, this issue is also answered in the negative and against the election petitioners.

Issue No. 7 – Whether the election of the respondent, i.e. Shri Naba Kumar Sarania (Hira), from the 5 Kokrajhar (ST) Parliamentary Constituency in Assam State is liable to be declared void ?

54. The right to challenge the election of a returned candidate by filing an election petition is a right available under the statute, i.e. *The Representation of People Act, 1951*. Section 100 of the Act of 1951 lays down the grounds on which the election of a returned candidate can be held to be void. In the present case, the petitioners have challenged the election of the respondent under Section 100(1)(b) of the Act of 1951. However, as discussed above, the petitioners have failed to establish that the election of the respondent contravenes Section 100(1)(b) of the Act of 1951 in any manner. As such, this issue is also decided against the election petitioners.

55. For the reasons mentioned here-in above, this election petition is held to be devoid of any merit and the same is accordingly dismissed.

There would be no order as to costs.

SUMAN SHYAM, Judge
[No. 82/AS-HP/03/2014]

By Order,

NARENDRA N. BUTOLIA, Principal Secy.

नई दिल्ली, 14 जून, 2017

आ.अ. 43.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग एतद्वारा निर्वाचन अर्जी सं. 14/2014 में दिये गये उच्च न्यायालय, छत्तीसगढ़, बिलासपुर के तारीख 19 जुलाई, 2016 के आदेश को प्रकाशित करता है।

(आदेश अधिसूचना के अंग्रेजी भाग में छपा है)

[सं. 82/छ.ग.-लो.स./ (14/2014)/2017]

आदेश से,

के. एन. भार, सचिव

New Delhi, the 14th June, 2017

O.N. 43.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes Order dated the 19th July, 2016 of the High Court of Chhattisgarh Bilaspur in Election Petition No. 14 of 2014.

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

EP No. 14 of 2014

- Ajit Pramod Kumar Jogi S/o K. P. Jogi Aged About 68 Years
R/Anugrah, Sagun Bungalow, Civil Lines, Raipur (C.G.) ...Petitioner

Versus

1. Chandulal Sahu S/o Late Punitram Sahu Aged About 54 Years R/o Shivaji Chowk, Aamapara, Rajim, Distt. Gariyaband C.G.
2. Kanhaiyalal Sahu S/o Mohanlal Sahu Aged About 51 Years R/o Ramsagarpara, Aamatalab Road, Dhamtari, Distt. Dhamtari C.G.
3. Smt. Abha Pandey W/o Purushottam Pandey Aged About 32 Years R/o Professors Colony, Street No. 15, Sector-3, Raipur C.G.
4. Smt. Kumari @ Preeti Dhruv D/o Pankuram Aged About 33 Years W/o Jai Prakash Dhruv, R/o Hardi, Post-Ghonch, Tah. Pithora, Distt. Mahasamund C.G.
5. Mohanlal Patel S/o Jaijai Patel Aged About 51 Years R/o Bajibahal, Post- Singhora, Tah. Saraipali, Distt. Mahasamund C.G.
6. Laxman Masturiya S/o Kundan Das Masturiya Aged About 64 Years R/o Sector-1, Durga Chowk, House No. 160, Professors Colony, Raipur C.G.
7. Shridhar Chandrakar S/o Manharan Lal Chandrakar Aged About 42 Years R/o Ward No. 13, Purani Basti, Kurmipara, Jagannathi Chowk, Mahasamund C.G.
8. Gangadhar Patel S/o Bodhram Patel Aged About 53 Years R/o Chuipali, Post- Singhora, Via- Saraipali, Distt. Mahasamund C.G.
9. Chanduram Sahu S/o Nakul Sahu Aged About 56 Years R/o Ghonch, Tah. Pithora, Distt. Mahasamund C.G.
10. Chanduram Sahu S/o Rambharosa Sahu Aged About 58 Years R/o Durgpali, Tah. Pithora, Mahasamund C.G.
11. Chandu Ram Sahu S/o Pilauram Sahu Aged About 60 Years R/o Tundra, Post- Tundra, Distt. Baloda Bazar C.G.
12. Chandu Lal Sahu S/o Awadh Ram Sahu Aged About 25 Years R/o Garhsivni, Tah. Mahasamund, Distt. Mahasamund C.G.
13. Chandu Lal Sahu S/o Tiju Ram Aged About 26 Years R/o Bhatigarh, Post- Bhatigarh, Thana- Mainpur, Distt. Gariyaband C.G.
14. Chandulal Sahu S/o Parmanand Sahu Aged About 61 Years R/o 2 Toulidih, Tah. Bhatgaon, Distt. Baloda Bazar C.G.
15. Chandulal Sahu S/o Balchand Sahu Aged About 32 Years R/o Manjitha, Tah. Aarang, Distt. Raipur C.G.
16. Chandulal Sahu S/o Samelal Sahu Aged About 40 Years R/o Goindra, Post- Goindri, P.S. Pathariya, Distt. Mungeli C.G.
17. Champalal Patel S/o Somnath Patel Aged About 47 Years R/o Mararkasi Bahra, P.O. Charoda Bandh, Tah. Bagbahra, Distt. Mahasamund C.G.
18. Chandulal Sahu S/o Nathuram Sahu Aged About 40 Years R/o Tarpongi, Post- Mohandi, Distt. Mahasamund C.G.
19. Chandulal Sahu S/o Sonulal Sahu Aged About 42 Years R/o Temri, Tah. Dharsiwa, Distt. Raipur C.G.
20. Dev Prasad Kelkar S/o Kodu Kelkar Aged About 50 Years R/o Barekelkala, Post- Bartora, Mahasamund C.G.
21. Motilal Sahu S/o Bajarharam Sahu Aged About 35 Years R/o Bauli, Tah. Pathariya, Distt. Mungeli C.G.
22. Motilal Sahu S/o Sonlal Sahu Aged About 35 Years R/o House No. 295g, Naya Mangal Bazaar, Gudhiyari, Raipur C.G.

23. Rupanand Sui S/o Gourango Sui Aged About 38 Years R/o VillageRajasewaiya, Khurd, Tah. Pithora, Distt. Mahasamund C.G.
24. Vijay Kumar Patel S/o Santosh Patel Aged About 44 Years R/o Rimji, Post- Kalenda, Saraipali, Distt. Mahasamund C.G.
25. Sukhnandan Deshkar S/o Sudarshan Deshkar Aged About 43 Years R/o Harnadadar, Post- Chuapali, Tah. Bagbahra, Distt. Mahasamund C.G.
26. Hemant Pradhan S/o Meghnath Pradhan Aged About 53 Years R/o Durgpali, Tah. Basna, Distt. Mahasamund C.G.

...Respondents

- For the applicants : Dr. N.K. Shukla, Sr. Advocate with Mr. Shiv Shankar Tiwari, Advocate.
- For Respondent No.1 Mr. U.N.Awasthy, Sr. Advocate with Mrs. Raksha Awasthi, Mr. Ramakant Mishra & Mr. Surendra Kumar Dewangan, Advocates
- For Respondent No. 9 Mr. Kshitiz Sharma, Advocate.
- For Respondent No.13 Mr. Maneesh Sharma, Advocate

Hon'ble Shri Justice Goutam Bhaduri**CAV JUDGMENT****19.07.2016**

1. The instant petition is concerned with the election to the Parliament of India of Mahasamund Parliamentary Constituency bearing No.9. In such constituency, the petitioner contested the election and was sponsored on behalf of Indian National Congress Party whereas respondent No.1 Chandulal Sahu, son of late Puntram Sahu contested for and on behalf of Bhartiya Janta Party. The election was held as per the following schedule.

(i) Last Date of filing of nomination paper	26.03.2014
(ii) Date of scrutiny of nomination papers	27.03.2014
(iii) Last date of withdrawal of nominations	29.03.2014
(iv) Date of Polling	17.04.2014
(v) Date of counting	16.05.2014
(vi) Date of declaration of election result	16.05.2014
2. Respondent No. 1 was declared elected as returned candidate who secured the total votes of 503514 whereas the petitioner secured votes of 502297. Apart from respondent No.1 Chandulal Sahu, son of Puntram Sahu, 9 other similarly named candidates contested the election in the name of Chandulal Sahu or Chanduram Sahu.
3. The primary challenge made by the petitioner is that the nomination papers of six other similarly named persons i.e., Chandulal Sahu or Chanduram Sahu were improperly accepted by the returning officer in violation of Article 84 of the Constitution of India which mandates that a person shall not be qualified to be chosen to fill a seat in parliament unless he is citizen of India and makes and subscribes before some person authorized in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in third schedule. During the course of submission Shri N.K. Shukla, learned Senior Advocate appearing for the petitioner would submit that Article 84 of the Constitution of India is framed in negative phraseology, therefore, on reading Article 84 of the Constitution of India along-with section 100 of the Representation of the People Act, 1951 (hereinafter referred to as the Act, 1951), would indicate that as per Section 100(1)(d)(i) if improper acceptance of any nomination is made, then it would fall within the ambit of Section 100 which stipulates the grounds for declaring the election to be void. It is stated that six persons were not administered oath as per Article 84. The counsel would submit that on 26.03.2014 at 3 p.m., six persons were said to have administered oath at the same time. It is contended that on bare evaluation, it would lead to show that the oath was not actually administered. Referring to the evidence of D.W.1, the returning Officer, the counsel would submit that according to the Returning officer, the oath was administered at 3 p.m., and the nomination papers were also submitted at 3 p.m., which would be evident from Ex.P.7 onwards to Ex. P-20. It is contended that the time of administration of oath is recorded along-with time of submission of nomination papers, therefore, any oral evidence as against this would not be inadmissible in view of section 91 of the Evidence Act.
4. Placing reliance in **AIR 1984 SC Pg. 146**, it is stated that the votes of candidates whose nominations were improperly accepted were of 21745 and since their nominations were improperly accepted as such the same has materially affected the result of election, therefore, the entire election becomes void. It is further stated that while exercising jurisdiction by the Election Tribunal, the Tribunal exercises its jurisdiction on its original

side, therefore, the petitioner would be at liberty to raise any grounds which are against Article 84 of the Constitution of India. He further submitted that in reply to election petition, evasive reply has been made, therefore, the same amounts to admission and the facts enumerated in the election petition would amount to acceptance and accordingly the election be set aside.

5. Per contra, learned counsel for respondent No.1 Shri U.N. Awasthi, Sr. Advocate, would submit that on evasive grounds and presumption, the election petition has been filed. It is submitted that the petitioner, of his own, has decided the issue that the nominations were improperly accepted, therefore, the election is void, which cannot be accepted. Referring to **AIR 1969 SC 1034**, it is stated that in an election, the nomination has to be first made, thereafter the oath is administered. Referring to Format, the counsel would submit that the format which has been accepted would show that initially the nomination was made and subsequent to it the oath was administered. The counsel referred to the statement of D.W.1 and stated that the time of filing of nomination was upto 3 p.m., and when the 6 nomination was made, the oath could have been administered till the mid night as per the direction of the Election Commission as the nominations could not have been refused.
6. It is further submitted that the Election Commission has the power to give direction as has been held in **AIR 2014 SC 3102**. Therefore, the direction has been given that when the candidate files the nomination then till mid night of that date oath could have been administered. It is stated that in such situation, the time of administration of oath has to be interpreted that the oath is administered on the same date before the scrutiny of nomination papers. It is further submitted at the behest of the petitioner that similarly named persons Chandulal Sahu or Chanduram Sahu were collected from different places, their accounts were opened at serial numberwise in the bank and in a preplanned manner their nomination papers were submitted at 3 p.m., and subsequently they were administered oath. It is further contended that the entire effort was made by the petitioner as the voters who voted for similarly named contesting candidates i.e., Chandulal Sahu or Chanduram Sahu would have naturally damaged the vote bank of respondent No.1 Chandulal Sahu and not that of election petitioner Ajit Pramod Kumar Jogi. He, therefore, submits that the petition is completely frivolous as the petitioner when failed to be elected by democratic process despite all his effort now challenge is made in the election petition on frivolous grounds, therefore, the petition be dismissed with exemplary costs.
7. On the basis of pleadings, by order dated 14.07.2015 the Court had framed two issues as under:

Sr. No.	Issue	Finding
(i)	“Whether the result of the election so far as it relates to the returned candidate/Respondent No.1 Chandulal Sahu has been materially affected by non-compliance of the provisions of the Constitution of India and the Representation of the People Act, 1951 or any Rules framed thereunder ?	Not proved
(ii)	Any other relief which this Court deems fit shall also be considered at the time of final hearing.	“Not entitled to any relief”

8. The petitioner on his behalf had examined K.K. Behar, Deputy Election Officer as P.W.1 and the petitioner himself P.W.2. The respondents on their behalf had examined R. Sangeeta as D.W.1, the returning officer and Chandulal Sahu, D.W.2.
9. From the pleadings made, evidence adduced and the submissions made, the entire challenge as projected is primarily on the ground that six candidates were not administered oath, thereby improper acceptance of nomination was made by the returning officer in violation of article 84 of the Constitution of India. The contention of the petitioner is that since the oath was not administered and was impossible at the same time of 3 p.m., therefore, the administration of oath is per-se illegal. Since the entire thrust is about administration of correctness of oath and reference is made to Article 84 of the Constitution of India, the said article which would be relevant for the purpose is reproduced hereunder.
10. Article 84 speaks about qualification for membership of parliament which reads as under :

“84. Qualification for membership of Parliament.— A person shall not be qualified to be chosen to fill a seat in Parliament unless he –

- (a) is a citizen of India, and makes and scribes before some person authorized in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule.
- (b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty five years of age; and
- (c) Possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament”.

11. Likewise the relevant Section 100(1)(d)(i) of Representation of People Act, 1951 which would govern the present lis which reads as under:

100. Grounds for declaring election to be void.- (1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

- (a) xxx
- (b) xxx
- (c) xxx
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected –
 - (i) by improper acceptance of any nomination, or
 - (ii) xxx
 - (iii) xxx
 - (iv) xxx

the High Court shall declare the election of the returned candidate to be void.

12. The entire question which falls for consideration in this case is as to whether the improper acceptance of nomination forms or non-administration of oath of six candidates as alleged by the petitioner is proved beyond all reasonable doubt ?

13. (i) In order to find out the answer when survey is made of the evidence, it would show that the nomination form of Chandulal Sahu, son of Pilau Ram Sahu, son of village Tundra arrayed as respondent No. 11 is marked as Ex.P-7. The signatures in this document are not in dispute. It records that on 26.3.2014 at 3 p.m., the form was submitted and thereafter the time of oath was shown as 3 p.m., before the Returning Officer. This respondent had contested as an independent candidate.

(ii) Likewise Ex.P-8 is the form submitted by Chandu Ram Sahu, son of Nakul Sahu of village Ghonch, who is arrayed as Respondent No.9. It also records that the submission of nomination form was made on 26.3.2014 and the oath was administered on the same date, which shows the timing at 3 p.m. Ex.P-9 & P-10 have been marked twice as they are the second and third sets of nomination forms deposited by the candidate, which appears to be the similar form of Chandu Ram Sahu, son of Nakul Ram Sahu of village Ghonh. The forms were deposited in three sets. The document except Ex.P-8 the certificate of oath is not attached with Ex.P-9 & Ex.P-10.

(iii) The document Ex.P.11 is nomination form of Chandu Ram Sahu, son of Ram Bharosa Sahu of village Durgpali who is arrayed as Respondent No.10. It also shows that 10 submission of nomination form was made on 26.3.2014 and the oath was administered on the same day at about 3 p.m. Two sets of nomination paper of Chanduram Sahu are again marked as Ex.P-12 & Ex.P-13, however, no declaration of oath is attached to these two documents.

(iv) Ex. P-14 is the document of nomination form of Chandulal Sahu, son of Awadh Ram Sahu of village Gadseoni who is arrayed as Respondent No.12. It also records the filing of nomination on 26.03.2014 and oath was shown to be administered on 26th March 2014 at about 3 p.m.

(v) Ex.P.15 pertains to nomination form of Chandulal Sahu, son of Tijoram Sahu of village Bhatigarh who is arrayed as Respondent No.13 which also records that the submission of nomination form was made on 26.03.2015 and the oath was shown to be administered at 3 p.m., on the same day.

(vi) Ex.P-16 is the nomination form of Champalal Patel which shows that it was filed at 2.35 p.m., on 20.03.2014. Champalal Patel is arrayed as Respondent No.17 in the petition. The nomination form of Champalal Patel is further marked as Ex.P-17 which does not contain any affirmation of oath. Another set of nomination form of Champalal Patel is marked as Ex.P-18. The form Ex.P-17 is shown to be submitted on

20.03.2014 and Ex.P-18 is shown to be submitted on 25.03.2014 by Champalal Patel at 3 p.m. One more set of nomination form by Champalal Patel is marked as Ex.P.19 which appears to be of 25.03.2014 wherein time of deposit of nomination form is shown as 3.00 p.m. Likewise Ex.P-20 is also of Champalal Patel which shows that the nomination form was deposited at 3 p.m.

14. In all the aforesaid nomination papers the signatures of D.W.1 R. Sangeeta, the Returning Officer, have been admitted. The contention of the petitioner is that the nominations were submitted on 25.3.2014 at 3 p.m., and the oath of all six candidates were administered at the same time at 3 p.m., is not feasible and possible. Necessarily the issue raises a question of facts and a probabilities.
15. The returning officer R. Sangeeta is examined on behalf of the respondent. She being the primary evidence, the entire statement is evaluated. In her her deposition it is stated that the date of filing of nomination was from the date of notification from 19.03.2014 to 26.03.2014. At para 4 of her statement it is stated that during elections, the nomination forms are accepted from 11 a.m., to 3 p.m. and according to the direction of the Election Commission, if any candidate files nomination papers uptill 3 'O' clock, it cannot be refused. It is further stated that the acceptance of nomination paper was up to 3 O' clock, therefore, as per direction of election commission, the oath could have been given upto 12.00 hours in the midnight of the preceding day. The Returning Officer has further deposed that normally when the nominations are filed, at that time the oath is administered and in absence thereof, technically till 12 O' clock in the night of the same, day, the oath could have been administered.
16. The witness has further explained that on 19th, 20th & 21st of March 2014 (3 days) only one nomination was filed whereas on 24.3.2014, four nomination papers were received and on 25.03.2014, 3 nominations papers were received and on the last date of nomination i.e., 26.3.2014, as many as 28 nominations were filed. Explaining further fact, it is stated that on the basis of sale of nomination forms normally it is evaluated that how many nominations would come in the next coming days, therefore, all the preparations were already made. Explaining the procedure, the returning officer has further stated that as per the direction of the Election Commission if the candidates are present in the office premises for filing nominations before 3 p.m., then the candidates are issued tokens one by one and even after 3 p.m., according to token system, the nominations are accepted one by one since the candidates had tendered the nomination forms before the prescribed time of 3 p.m. It is specifically stated that an election officer cannot refuse any nomination. The returning officer has accepted the documents Ex.P.7, P-8, P-9, P-10, P-11, P-12, P-13, P-14, P-15, P-16 & P-17 which bear her signatures and also endorsed the fact that the signatures were made by the respective candidates before her. It is further contended that the petitioner has not objected at the time of filing of nomination anything in writing.
17. During the course of evidence on a direction given by the Court, the witness submitted that everything was recorded in the CD. Therefore, the witness was directed to verify the same and make submission after the CD is viewed by the witness. Pursuant thereto the witness was directed to specify at what time the oath was administered. Subsequently on 12.2.2016 the witness after verification of the CD asserted before the Court that she had administered the oath to candidates Chanduram Sahu, son of Nakul Sahu; Chandu Ram Sahu, son of Ram Bharosa Sahu; Chandu Ram Sahu, son of Pilau Ram Sahu; Chanduram Sahu, son of Awadh Ram Sahu; Chandulal Sahu, son of Tijoram Sahu i.e., 5 persons at 3 O' clock after their nominations were received.
18. So far as it relates to candidate Champalal, the documents show that his first nomination was received on 20.03.2014 at 2.35 p.m., and the oath was administered on 20.03.2014 at 2.35 p.m., itself. The said evidence remains un rebutted. No further challenge is made by the petitioner. The petitioner in his statement has deposed that it was impossible to receive, to check and then administer the oath at the same time in respect of the similarly named Candidates i.e., Chandulal Sahu or Chanduram Sahu at 3 p.m. In this context, if the entire evidence of the returning officer is surveyed it has been stated that if the candidates were physically present with their nomination forms before 3.00 p.m., then according to the token system their nominations are stated to be accepted at 3.00 p.m. Normally the time is shown as 3 p.m., for presentation and in lieu thereof some tokens were provided to the candidates. Further according to the token system the oath is administered either at the same time or subsequently till 12.00 hours in the midnight on the same date before the scrutiny. The said explanation cannot be shelved on the presumption and perceived opinion of the petitioner that when the time of nomination was given at 3 p.m., and the oath is shown to be administered at 3 p.m., the same cannot be done at the same time as an impossible task.
19. The explanation of the returning officer goes to show and will have a positive interpretation that if some candidates deposits their nomination forms at the last moment i.e., at 3 p.m., as was done in the instant case, then in such case when the candidates are physically present then the nominations are not refused till the time prescribed. It is a natural consequence or more democratic procedure if the person who deposits the nomination form to contest an election, would not be refused instead the oath can be administered uptill 12 O' clock in the night preceding to the date of Scrutiny. The returning officer in clarification after verification of the CD of persons has named the same persons i.e., Chandulal Sahu or Chanduram Sahu who were 5 in number and has reiterated the fact that the oath was administered at the same time i.e., at 3 p.m. It would be

too technical to interpret that the deposit of nominations was made at 3 p.m., and the oath could not be administered at the same time at 3 p.m., to 5 persons of having similar names i.e., Chandulal Sahu/Chanduram Sahu.

20. Part-V of the Representation of the People Act, 1951 deals with conduct of elections wherein Chapter-I deals with nomination of candidates. Section 30, 33 and 36 deal with appointment of dates for nominations, etc., presentation of nomination paper and requirements for a valid nomination and scrutiny of nominations. So far as it relates to the present case, relevant portions of Sections 30, 33 & 36 are reproduced herein below.

“30. Appointment of dates for nominations, etc.—As soon as the notification calling upon a constituency to elect a member or members is issued, the election commission shall, by notification in the Official Gazette, appoint—

- (a) the last date for making nominations, which shall be the [seventh day] after the date of publication of the first mentioned notification or if that day is a public holiday, the next succeeding day which is not a public holiday;
- (b) xx xx xx
- (c) xx xx xx
- (d) xx xx xx

Likewise, section 33(1) reads as under

“33. Presentation of nomination paper and requirements for a valid nomination ,--(1) On or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by his proposer, between the hours of eleven O’clock in the forenoon and three O’ clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer:

Provided that xxx xxx xxx

Provided that xxx xxx xxx

Provided that xxx xxx xxx

Likewise relevant portion of section “36 reads as under:

“36. Scrutiny of nomination. (1) On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer of each candidate, and one other person duly authorized in writing by each candidate but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.

(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, [reject] any nomination on any of the following grounds:-

- (a) that on the date fixed for the scrutiny of nominations the candidate either is not a qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely :-

Articles 84, 102, 173 and 191 [Part II of this Act, and sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963)]

(b) xxx xxx xxx

(c) xxx xxx xxx

(3) Nothing contained in clause [(b) or clause (c)] of sub-section (2) shall be deemed to authorize the [rejection] of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(5) The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:

Provided that in case [an objection is raised by the returning officer or is made by any other person] the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.

(6) The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

(7) xxx xxx xxx

(8) Immediately after all the nomination papers have been scrutinized and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board.”

- 21 A conjoint Reading of sections 30, 33 and 36 together would show that the presentation of nominations can be made between 11 a.m. and 3 p.m., in the after noon to the returning officer. The evidence as available in this case would indicate that it is not disputed that the nomination papers were deposited on 26.03.2014. Under Section 36(2) of the Act of 1951 one of the grounds on which the nomination can be rejected is that on the date fixed for the scrutiny of nomination, the candidate is not qualified for being chosen to fill the seat under Article 84 of the Constitution for membership of Parliament. The expression “on the date fixed for scrutiny” u/s 36(2)(a) means on the whole of the day on which the scrutiny of nomination has to take place. In other words, the qualification must exist from the earliest moment of the day of the scrutiny. In the instant case, according to the statement of the returning officer, the oath was administered on 26.03.2014 itself. It is categorically stated that as per the direction issued by the Election Commission if the candidate presents his nomination, then in such a case, it cannot be refused and the oath can be administered till 12 O' clock in the midnight preceding the day. If the facts are looked into in a technical stand point, the Returning Officer has stated that she has received the nomination papers of Chanduram Sahu, son of Nakul Sahu; Chandu Ram Sahu, son of Ram Bharosa Sahu; Chandu Ram Sahu, son of Pilau Ram Sahu; Chanduram Sahu, son of Awadh Ram Sahu and Chandulal Sahu, son of Tijoram Sahu at 3 O' clock and they were administered oath at 3 O' clock. The Act does not prohibit to file the nomination uptill 3 O' clock. So if more than one candidate filed nomination papers before or at 3 p.m., of the last day of filing nominations, then the Returning Officer was bound to accept it. The Act do not contemplate any time to administer oath. It only envisages that before the scrutiny, the candidate must have taken oath. The aforesaid named candidates of Chanduram Sahu or Chandulal Sahu who were 5 in number have not come forward before the Court to rebut the evidence of the Returning Officer. The Act also do not put a rider that each candidate has to be administered oath individually. Therefore, natural inference can be drawn that the oath could have been administered in a group.
22. It is settled preposition that unless the election petitioner discharges its burden it cannot be assumed on the opinion of the candidate that the oath was not administered. Undoubtedly no objection was raised at the time of scrutiny. The candidates who were administered oath though were parties before this Court have not come up to say that they were not administered oath. It is only the petitioner who lost the election has raised such ground. This aspect is writ large that the returned candidate/respondent No.1 Chandulal Sahu had sustained more damage as similarly named people had contested the election inasmuch as like named people would have shared his vote bank only. Therefore, when the candidates who were administered oath do not come up before the Court , it would be too technical to hold that such candidates were not administered oath.
23. A reference may usefully be made to the maximum “Falsa demonstratio non nocet cum de corore constat” which means mere false description does not vitiate, if there be sufficient certainty as to the object. 'Falsa demonstratio' means an erroneous description of a person or a thing in a written instrument; and the above rules respecting it signifies that where the description is made up of more than one part, and one part is true, but the other false, there, if the part which is true describes the subject with sufficient legal certainty, the untrue part will be rejected and will not vitiate the devise; the characteristic of cases within the rule being that the description, so far as it is false, applies to no subject at all, and, so far as it is true, applies to one only. (See Broom's Legal Maxims, 10th Edition, pp.426-427). Broom quotes (at Pag 438) an example that an error in the proper name or in the surname of the legatee should not make the legacy void, provided it could be understood from the will what person was intended to be benefited thereby.
24. Applying the aforesaid principle to the present case, in sum and substance it can be inferred that even if the time of 3 O' clock is written by the Returning Officer with respect to the time of administration of oath, evaluating the same in the light of the evidence which is on record, the same cannot be said to be wrong on the face of it.

25. In case of **Durga Shankar Mehta v. Raghurai Singh and others, AIR 1954 SC 250** the Supreme Court held that if the want of qualification does not appear on the face of the nomination paper or of the electoral roll but is a matter which could be established only by evidence, an enquiry at the stage of the scrutiny of the nomination papers is required under the Act only if there is any objection to the nomination. The Returning Officer is then bound to make such enquiry as he thinks proper on the result of which he can either accept or reject the nomination. But when the candidate appears to be properly qualified on the face of the electoral roll and the nomination paper and no objection is raised to the nomination, the Returning Officer has no other alternative but to accept the nomination.
26. It is true that mere failure of the appellant in raising objection to the validity of the nomination paper filed by the respondent before the returning officer does not stop or exclude the election petitioner from raising a plea before the High Court that some of the respondents were not administered oath. In this case, the same issue having raised and examined in the light of evidence, it goes to point out that the election petitioner has failed to substantiate the issue raised by adducing necessary evidence.
27. The Supreme Court further in case of **Ram Phal Kundu Vs. Kamal Sharma 2004 AIR SCW 1043** reiterated the principle laid down in **Jeet Mohinder Singh V. Harminder Singh Jassi, 1999(9) SCC** which reads as under:

“The success of a candidate who has won an election should not be lightly interfered with. Any petition seeking such interference must strictly conform to the requirements of the law. Though the purity of the election process has to be safeguarded and the Court shall be vigilant to see that the people do not get elected by flagrant breaches of law or by committing corrupt practices, the setting aside of an election involves serious consequences not only for the returned candidate and the constituency, but also for the public at large inasmuch as re-election involves an enormous load on the public funds and administration.”
28. The law applicable in this case do not mandate that the oath has to be administered on a certain point of time. The only bar is that before the scrutiny is held, the candidate should have taken oath. Nothing is on record to rebut such fact that before the scrutiny was made, no oath was administered. Therefore, when the allegations are put to issue, it should have been proved by clear, cogent and credible evidence and it has to be proved to the hilt as the standard of proof being the same as that in a criminal trial.
29. In the facts and circumstances of the present case, after survey of the entire evidence, this Court is of the opinion that the election petitioner has failed to prove his case beyond reasonable doubt. The pleading and evidence of the petitioner are too vague and are only premised over self opinion or are based on surmises and conjectures.
30. In the result, it is held that the petitioner has failed in making out a case for setting aside the election of respondent.
31. As an upshot of the above discussion, the petition is devoid of any force and is liable to be dismissed. In the facts and circumstances of the case, the parties shall bear their own costs.

GOUTAM BHADURI, JUDGE

[No. 82/CG-HP/(14/2014)/2017.]

By Order,

K. N. BHAR, Secy.

नई दिल्ली, 21 जुलाई, 2017

आ.अ. 44.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 2009 की निर्वाचन याचिका सं. 4 में मुम्बई उच्च न्यायालय के दिनांक 23.08.2016 के निर्णय/आदेश को एतद्वारा प्रकाशित करता है।

(सलग्न निर्णय/आदेश अंग्रेजी भाग में छपा है)

[सं. 82/महा.-लो.स./4/2009]

आदेश से,

ए. एन. दास, सचिव

New Delhi, the 21st July, 2017

O.N. 44.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission of India hereby publishes the judgment/order dated 23.08.2016 of the High Court of Judicature at Bombay in Election Petition No. 4 of 2009.

Rng

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ELECTION PETITION NO. 4 OF 2009**

Dr. Kirti Jayantilal Somaiya

...Petitioner

VS

Sanjay Dina Patil

...Respondent

Ms. Devika Bhosale I/b M/s. Divya Shah for Petitioner

Ms. Tejashri Gawade I/b M/s. Zohair & Co for Respondent

CORAM: G.S. KULKARNI, J

(in Chamber)

DATE: 23 AUGUST, 2016

P.C.

Learned counsel for the petitioner submits that this Election Petition has become infructuous and accordingly prays for withdrawal of the petition.

Allowed to be withdrawn. Dismissed as withdrawn.

[G. S. KULKARNI, J]
[No. 82/MT-HP/4/2009]

By Order,
A. N. DAS, Secy.